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TEN-POINT SETTLEMENT ANALYSIS

Westgate Mobile Home Park Superfund Site  
Greer, Greenville County, South Carolina

I. OVERVIEW

Region 4 proposes to enter into a CERCLA Section 122(h)(1), 42 U.S.C. § 9622(h)(1) Agreement for Recovery of Past Response Costs (Agreement) with Exide Corporation for recovery of response costs incurred by the U.S. Environmental Protection Agency (EPA) at the Westgate Mobile Home Park Site (Site). Exide is the sole responsible party for contamination at the Site. The Agreement provides that Exide will reimburse EPA removal costs of \$250,000. Total removal costs for the Site, as of January 15, 1999, are \$438,005.14.

Headquarters consultation and concurrence is not required for this Section 122(h)(1) settlement.

II. TERMS

The terms of the proposed settlement are that Exide will reimburse \$250,000 of EPA removal costs incurred at the Site.

The Agreement contains all standard EPA national model Section 122(h)(1) cost recovery agreement language governing reimbursement of EPA past response costs.

III. BACKGROUND

A. General Description of the Site

The Site is a 5-acre tract, located at 105 Old Chick Spring Road at the intersection of U.S. Highway 129 and Old Chick Spring Road, in Greer, South Carolina. Approximately 52 residential trailers are situated on the property. The Site is bordered on the northeast by Wade Hampton Boulevard, and to the southeast by the former Exide Corporation lead-acid battery manufacturing plant. The former Exide plant, located at 109 Old Chick Spring Road, is approximately 50 yards from the Site. Exide, as Bowers Battery and as General Battery and Ceramic Corporation, operated the plant from the early 1960s until 1998. The mobile home park was established in 1968.



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When it began operations in the 1960s, Exide constructed a lagoon on its battery-manufacturing plant property to treat industrial wastewater. As a result of the use of the lagoon for waste treatment purposes, the groundwater in the area of the plant became contaminated with lead and sulfates. Waste treatment in the lagoon was discontinued in 1977, after a neutralization system for pretreatment prior to discharge into the Greer sewer system was constructed.

B. Previous Investigations and Response Actions

In April 1986, the South Carolina Department of Health and Environmental Control (DHEC) determined that soil in the drainage area at the rear of the Exide plant was contaminated with lead. Later in 1986, Exide entered into an administrative consent order with DHEC to prepare an assessment plan to address on-Site soil contamination. During the period running from 1986 until August 1990, Exide removed approximately 1039 tons of soil from its battery-manufacturing plant property.

In January 1992, DHEC collected three soil samples from the Westgate Mobile Home property, and found lead concentrations of 270 ppm, 560 ppm and 800 ppm.

In June 1994, EPA collected 55 shallow soil samples across the mobile home park property. Lead concentrations detected during this sampling ranged from 42.1 ppm to 2110 ppm. Lead concentrations greater than 500 ppm were detected at six sampling locations. On August 10, 1994, EPA, Region 4 issued an action memorandum, requesting a removal action at Westgate. The action memorandum provided for the removal of contaminated soil from all areas of the trailer park in which lead was detected at levels higher than 500 ppm. Approximately 1200 tons of contaminated soil were removed from these areas of high lead concentrations (500 ppm or more). The removal action was completed on December 1, 1994.

In April 1996, Exide entered into a second administrative consent order with DHEC, which required: (1) preparation of a site assessment work plan for the Exide plant; development of a plan of remediation for the contaminated subdivision; and performance of a remedial investigation at the Westgate Mobile Home Park.

In December 1996, DHEC conducted a preliminary assessment/site inspection at Westgate Mobile Home Park, and concluded from the high levels of lead detected in on-Site soils that the Site should be given high priority for further Superfund cleanup activity. Due to the then ongoing remedial investigation

conducted by Exide under consent order with the state, DHEC recommended that the Site be referred to DHEC for oversight of further remedial investigation and action. Pursuant to DHEC's recommendation, EPA designated Westgate a no-further-remedial-action facility, and remedial action activities are ongoing at the Site pursuant to consent order between Exide and DHEC.

In July 1997, Region 4 requested that the National Enforcement Investigations Center (NEIC) conduct an investigation to determine if lead deposits found on the Exide plant property were sufficiently similar to those found on the Westgate property to warrant a finding that the Exide plant was the source of lead contamination on the Westgate property. On January 28, 1999, Region 4 received an Executive Summary of Initial Lead and Tin Antimony Results from Westgate soil samples. NEIC reported that ratios of lead to antimony in the trailer park soil are consistent with ratios of lead to antimony in soil samples from the Exide plant property. That investigation is ongoing, and Region 4 has not yet received a final report of NEIC's findings.

#### C. Cost Recovery Negotiations History

In December 1998, EPA demanded payment from Exide of removal costs incurred at Westgate. Exide responded to the demand by asserting that the removal had been completed in August 1994, and the December 1998 demand was time-barred under the applicable statute of limitations (Section 113 of CERCLA, 42 U.S.C. § 9613). Region 4 responded that the NEIC investigation - begun in July 1997 - extended the deadline under the limitation statute to a date three years following the completion of the NEIC study.

After conceding the statute of limitations issue, Exide argued that the cost of the NEIC study was excessive, and that Exide should not be required to pay the costs of a \$300,000 study, the purpose of which is to establish the liability of a cooperating responsible party. (EPA-Removal contractor costs for this Site were \$97,051.53.)

**5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)**

#### D. PRP Analysis

Exide operated the only facility in the area of the Site from which a lead-contaminated waste stream was produced. Exide has entered into two administrative consent orders under which it has agreed to investigate and conduct cleanup at the Site. Exide,

however, raised the issue of its responsibility for an ongoing investigative study conducted by NEIC for the purpose of determining the liability of a cooperating PRP. Region 4 deemed the cost and protracted length of time over which the NEIC study has been conducted to be equitable matters for which Exide deserved consideration, and agreed to compromise its claim for removal response costs.

#### IV. TEN-POINT SETTLEMENT ANALYSIS

##### A. Volume of Waste Attributable to the PRP

Exide, during the period of its lead-acid battery manufacturing operations (from the 1960s until 1998) on the property adjacent to the Westgate Mobile Home Park, was the only facility in the area of the trailer park producing a lead-contaminated waste stream. Preliminary reports on the NEIC study indicate that lead deposits detected on the trailer park property contain a lead-tin antimony very similar in composition to that detected on the Exide plant property. Exide, while not fully acknowledging or conceding its liability, has agreed, by consent order with the State of South Carolina and by signing a CERCLA Section 122(h) cost recovery agreement with EPA to proceed with cleanup of the Westgate site and to compromise its liability for EPA removal costs. Exide is the only known responsible party at Westgate, and is responsible for all wastes disposed of at the Site.

##### B. Nature of Wastes Contributed

Lead-tin antimonies, very similar to those generated and detected at the Exide plant, were found on the Westgate Mobile Home Park property. The precise manner of the migration of lead deposits from the Exide plant to soils on the trailer park property has not been documented by DHEC or EPA investigative reports. Exide has, however, effectively conceded its liability for lead contamination at the Westgate site.

##### C. Strength of Evidence Tracing the Wastes at the Site to the Settling Party

Liable parties under Section 107 of CERCLA include a generator of hazardous substances who caused the release of a hazardous substance, owned or possessed by such generator, at a facility. A "release" includes any dumping, disposing, emitting, spilling, escaping and the like of a hazardous substance into the environment. A "facility" means any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located. See CERCLA Sections



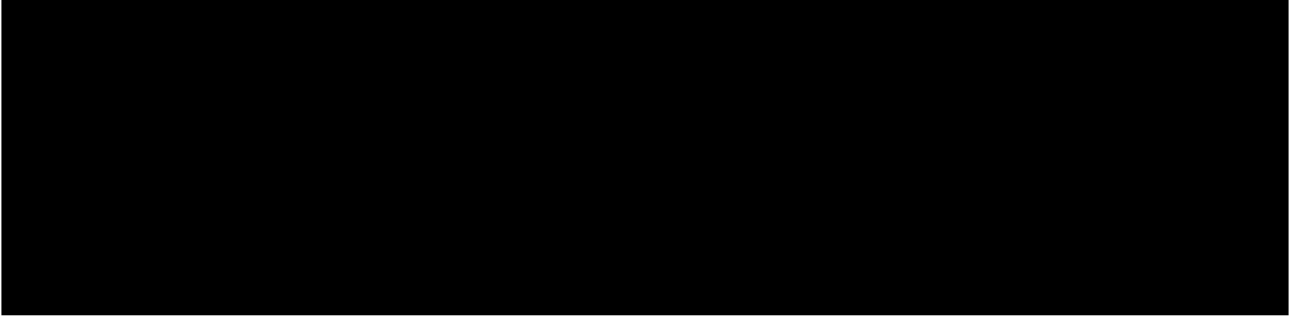
107(a)(3) and 101(9) and (22), 42 U.S.C. §§ 9607(a)(3) and 9601(9) and (22). EPA has no direct evidence of the release of a hazardous substance by Exide onto the Westgate Mobile Home Park property, and Exide has not admitted its liability for any release that has occurred on that property. EPA has only a preliminary report on the NEIC study, the purpose of which was to "fingerprint" the lead-tin antimony deposits found on the Exide battery plant property and those found on the trailer park property, as proof of Exide's responsibility for contamination at Westgate. According to NEIC's preliminary report, the antimonies detected on both properties are substantially identical, which suggests strongly that the Exide plant was the source of lead deposits on the Westgate property. Exide was the only known generator of a lead-contaminated waste stream in the area of the trailer park.

D. Ability of the Settling Party to Pay


Exide is a large national, corporate concern with very substantial assets, and there are no issues as to its ability to pay \$250,000 in settlement of EPA's claim for removal costs at this Site.

E. Litigative Risks in Proceeding to Trial

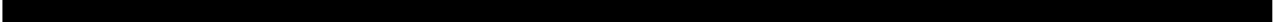
5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)



5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)



5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)



5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)

F. Public Interest Considerations

The public's interest in this case is in conserving and reimbursing the Superfund and avoiding needless litigation risk.

G. Precedential Value

This case does not appear to present any significant precedential value.

5 U.S.C. § 552 (b)(5) & 5 U.S.C. § 552(b)(7)(A)

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H. Value of Obtaining a Present Sum Certain

The value of obtaining a present sum certain is substantial in a case which presents significant risk of incurring a negative precedent in the form of adverse judicial rulings on the statute of limitations issue and on whether or not the equities favor Exide in the matter of the costly and yet-incomplete NEIC study conducted to establish Exide's liability.

I. Inequities and Aggravating Factors

The costly and still incomplete NEIC investigation is a potential inequity or aggravating factor in this matter.

As to Settling Party:

Ari D. Levine,  
 Assistant General Counsel, &  
 Director, Regulatory Affairs  
 645 Penn Street  
 Reading, PA 19612-4205

XIII. INTEGRATION/APPENDICES

34. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendices are attached to and incorporated into this Agreement:

Appendix A - a map of the Site

XIV. PUBLIC COMMENT

35. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XV. EFFECTIVE DATE

36. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 35 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: 

Franklin E. Hill, Chief  
 Program Services Branch  
 Waste Management Division

2/24/91  
 [Date]